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Supreme Court, U.S.
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NO. 87-1038

IN THE

Supreme Court of the United States

October Term, 1987

THE CITY OF AURORA, by and through its MAYOR and CITY COUNCIL, STAN THOMISON and KENNETH L. PETERSON,

Petitioners,

v.

JEWELL NEPHEW, RAFUS PERKINS, ELAINE NELOMS and CHARLES FULTON, individually and on behalf of all persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

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Petitioners,

v.

JEWELL NEPHEW, RAFUS PERKINS, ELAINE NELOMS and CHARLES FULTON, individually and on behalf of all persons similarly situated,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. FACTURAL BACKGROUND OF THIS CASE

While the facts in Petitioner's brief are not necessarily incorrect, they are slanted and incomplete. This matter arose from alleged violations of the constitutional rights of the Respondents. Through the course of litigation, the Respondents attempted to establish that the violation of their constitutional rights by the two named police officers were part of a pattern and practice of the city of Aurora, through its Mayor and Police Department, to violate the constitutional rights of Black persons. It was in this context that the Respondents requested relief in the amount of $2,000,000.00. The Respondents were not able to establish the pattern and practice to the satisfaction of the trial court and those aspects of the claim were dismissed. The matter

then proceeded to the jury on the individual violations alleged by the Respondents. The Jury specifically found that the constitutional rights of Respondents Fulton and Perkins were violated by the two named police officers.

The Jury reached this verdict based on the presentation of evidence that showed that the two police officers had indeed come to Respondent Perkins' apartment to issue a summons for loud music. They found that after having done that, the police officers continued to harass and harangue Respondents Perkins and Fulton even though the record player had been turned down to an unobjectionable level. The Jury further found that the officers, after a series of verbal harassments of the Respondents, physically attacked, assaulted, and battered the persons of Respondents Fulton and Perkins. Based on these facts, the jurors unanimously held that Respondents' United States Constitutional rights, to be secure in their homes and persons, and from unlawful invasion thereof, were violated by the two named officers, who were acting under color of state law, custom or policy.

In charging the Jury, the Trial Court instructed that if they found that the United States Constitutional rights of the Respondents had been unlawfully violated, that the Jury had several options in providing monetary remedies. Among those options was the awarding of nominal damages. The Jury selected that option in finding for Respondents, Fulton and Perkins.

B. JUDGMENT OF THE DISTRICT COURT

In *Cary v. Piphus,* 435 U.S. 247, (1978), this Court held that nominal damages were sufficient to constitute a party as prevailing and thereby give rise to an award of both costs and attorney fees. Based on that guidance, which has been consistently reaffirmed by this Court, the Trial Court awarded attorney fees to the prevailing Respondents.

The Petitioners characterization of this victory by Respondents Perkins and Fulton as a "moral victory" belittles the impact of a finding of an intentional violation of the United

States Constitutional rights of the Respondents by these two police officers. To the Respondents this was the major purpose for the lawsuit. This fact was recognized by the Trial Court in rendering its decision on the attorney fee question. (*See* Petitioners' Brief, App. A, 3a, 6a, 7a). These same factors stated by the Trial Court in his ruling contributed greatly to the Respondents' inability to establish a class action lawsuit. At the close of Respondents' case, the Judge dismissed the City of Aurora, and its officials. With this dismissal, Respondents request for declartory and injunctive relief were no longer appropriate.

C. JUDGMENT OF THE CIRCUIT COURT OF APPEALS

Respondents agree with the processes through the Tenth Circuit Court of Appeals as indicated in Petitioners' Brief. Respondents point out, however, that the holding of the Tenth Circuit was that the two Respondents prevailed because they had established to the satisfaction of the Jury that their constitutional rights had been violated by the two police officers.

As is noted in the Court of Appeals en banc decision, Respondents counsel, after attempting to remove all of the hours related to unsuccessful claims, requested payment for 180.5 hours at $125.00 per hour. (*See* Petitioners Brief, App. D. 25a, 26a). The reasonable necessity of this expenditure of time was not questioned by the Petitioners at the Trial Court. This then was the "lodestar." The Trial Court, in considering the degree of success obtained, reduced the number of hours to 100 and awarded payment for those hours. (*See* Petitioners' Brief, App. A., 6a, 7a) The Court of Appeals approved this reduction in fees.

REASONS FOR DENYING THE WRIT

I. The issues raised by petitioners have been firmly decided by this Court and have been uniformly applied by the various Courts of Appeals.

The Court of Appeals applied the appropriate standard in determing that the Respondent's were prevailing parties entitled to an award of attorney fees and in affirming the District Court's particular award in this case.

As is indicated previously, this Court in *Carey v. Piphus, supra,* determined that a party who receives nominal damages is a prevailing party for purposes of an award of costs and attorney fees. That holding by this Court has not been disturbed and indeed, has been applied consistently since its announcement.

In *Hensley v. Eckerhart,* 461 U.S. 424, 76 L.Ed.2d 40 (1983) this court cited with favor *Nadeau v. Helgemoe,* 581 F.2d 275, 278-279 (1st Cir. 1978). *Nadeau* held that "plaintiffs may be considered prevailing parties for attorneys fees purposes if they succeed on any significant issue in litigation which achieves some of the benefits the parties sought in bringing suit." 76 L.Ed.2d at 50. In stating the above, the Court noted that this is a generous formulation of the doctrine. In the within matter, the dominant and perhaps sole issue in litigation was, whether the constitutional rights of Respondents Fulton and Perkins had been willfully violated by the two named police officers while they were acting under color of state law. That issue was decided by the Jury in favor of Respondents Fulton and Perkins. The fact that the Jury chose to award nominal damages as opposed to the other alternatives does not in any way diminish the Jury's central finding that the constitutional rights of the Respondents had been violated.

This distinction, although not noted by Petitioners herein, was clearly noted by the Trial Court and by the Court of Appeals. Respondents so called "moral victory" was in fact a legal victory which acknowledged the violation of their constitutional rights. The Trial Court recognized this distinction and expressed it as follows:

> It is not really so much how much money a jury decides to give or I shouldn't say give — to award — as it is a determination in the court of law by a jury as to who is right under the circumstances, and labeling in this case the conduct of the police, these two police officers as it related to these two plantiffs who did prevail at trial, that in this circumstance the police were wrong. That's important.
>
> It's important for the police as well as for the plaintiffs because it gives us an indication through these representatives of the community of what standards of police conduct should prevail, and that serves — I hope that serves — as some guidance for the police with respect to how they perform their difficult tasks. (*See* Petitioners' Brief, App. A, 6a, 7a)

The Trial Court was clearly aware of the issue in litigation.

It is also significant that at every stage in these proceedings, Respondents were held to be the prevailing parties. The three judge panel that originally reversed the trial court recognized this fact and stated "we have no trouble finding the Plaintiffs in the instant case are prevailing parties even though they won only nominal damages, *see, e.g. Skoda v. Fontani,* 646 F.2d 1193 (7th Cir. 1981)." (Petitioners' Brief, App. B, 12a) Nor does there appear to be any question among the various courts of appeal that the award of nominal damages establishes a prevailing party.

In attempting to relegate Respondents victory to a "moral victory" Petitioners rely on *Huntley v. Community School Board of Brooklyn,* 579 F.2d 738 (2nd Cir. 1978). In that instance the appellate court approved the trial court's holding that: " . . . appellant at most had won a "moral victory" of insufficient magnitude to warrant an award under §, 1988." However, Petitioners failed to realize that in *Huntley* the second circuit refused to disturb the finding of the trial court because of absence of abuse of discretion. The Court made this clear in a later case. The Court of Appeals held in *Milwe v. Cavuoto,* 653 F.2d 80 (2nd Cir. 1981) relying on *Carey* and *Zarcone v. Perry,* 581 F.2d 1039 (2nd Cir. 1978), cert. denied, 439 U.S. 1072, 99 S.Ct. 843, 59 L.Ed.2d 38 (1979) that: " . . . even if fees were not awarded on the basis of *Milwe's* pendent state law claim, the one dollar assessed against Sergeant Savuoto on plaintiff's constitutional claim would be sufficient to support an award of fees under the Act."

Further, the court explained with reference to *Huntley:* "In that case *(Huntley),* the trial judge had applied the correct criteria and we simply found no abuse of discretion in his conclusion that the prevailing plaintiff has won 'only a moral victory' of insufficent magnitude to warrant an award under Sec 1988." In the instant case, Petitioners did not allege the abuse of discretion by the Trial Court and therefore the Writ of Certiorari should be denied. *See also Ganey v. Edwards,* 759 F.2d 337 (4th Cir. 1985); *Bradley v. Coughlin,* 671 F.2d 686 (1st Cir. 1982); *Pollock v. Baxter Manor Nursing Home,* 716 F.2d 545 (8th Cir. 1983); *Ryland v. Shapiro,* 708 F.2d 967 (5th Cir. 1983); *Tatum v. House,* 642 F.2d 253 (8th Cir. 1981); *Hogue v. Clinton,* 791 F.2d 1318 (8th Cir. 1986), *cert. denied,* 107 S.Ct. 648, 93 L.Ed.2d 704 (1986); *Westborough Mall, Inc. v. City of Girardeau, Mo.,* 794 F.2d 330 (8th Cir. 1986), *reh'g. denied,* 804 F.2d 108 (1986), *cert. denied,* 107 S. Ct. 1373, 94 L.Ed.2d 688 (1987).

Clearly the existing legal authority, as announced by this Court, and by the various courts of appeal supports the findings of the courts below that Respondents were prevailing parties. Equally clear is the fact that the Trial Court properly considered the "results achieved" in fashioning its attorney fee remedy.

II. The award of the attorneys fees to Respondent was discounted by the trial court to compensate for limited success

In order to determine the appropriate attorney fee, the Trial Court held a hearing. Respondents counsel submitted to the Court an affidavit of fees. (*See* Appendix 1) After hearing arguments, the Trial Court noted that it was being guided by the Tenth Circuit's decision in *Ramos v. Lamm,* 713 F.2d 546 (10th Cir. 1983) *Ramos* was announced with the benefit of this Court's decision in *Hensley.*

In *Hensley v. Eckerhart, supra,* on which the Petitioners rely and attempt to base much of their argument, this Court spoke specifically to these situations and gave the trial court the following guidance on whether and how the lodestar ought to be reduced:

> There is no precise rule or formula for making these determinations. The District Court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment. This discretion, however, must be exercised in the light of the considerations we have identified. 76 L.Ed.2d at 52.

The Trial Court herein was very much aware of this Court's holding in *Hensley* and indeed fashioned its ruling in accordance with *Hensley*. The Trial Court chose to reduce the award to account for the prevailing Respondents' limited success rather than to attempt to eliminate specific hours.

As is indicated in Appendix 1, Respondents' Counsel had removed from the attorney fee request, to the maximum extent possible, all hours relating to claims on which Respondents did not prevail. Included in the request were 34.9 hours that related to Respondents' efforts in the companion state court case that arose from the same incident. As Petitioners indicate in their brief and as the Trial Court indicated in its judgment, the two named police officers had previously filed a charge of assault and battery against the Respondents in Colorado state courts. This action came to trial prior to the State Court matter. This Court's decisions make it very clear that the Trial Court could have appropriately awarded Respondents' their attorney fees in the State action as well as the other hours for which it denied payment. *See Maine v. Thiboutot,* 481 U.S. 1. (1980). The Trial Court clearly followed the guidance of this Court and the applicable decisions of the Tenth Circuit Court of Appeals.

What the Trial Court did not do, and what Petitioners' urge, is to apply a rule of proportionality to Respondents' attorneys fees award. To this point, no court to whom Petitioners have turned has been willing to adopt such a rule. Instead the Trial Court

applied the factors that were enunciated by this Court in *Hensley*.

Upon its decision to reconsider this matter en banc, the Tenth Circuit Court of Appeals awaited this Court's decision in *City of Riverside v. Rivera*, 47 US _____, 91 L.Ed.2d 446, 106 S.Ct. _____ (1986) The concern of the Court was the question raised in *Rivera;* whether it was appropriate for a rule of proportionality to be applied in civil rights cases. Upon receipt of the decision in *Rivera* the Tenth Circuit Court of Appeals affirmed the judgment of the Trial Court.

A review of the decision of the Trial Court in this matter reflects that the Trial Court's Order is consistent with all three of the opinions in *Rivera*. Since This Court did not depart from its judgment as enunciated in *Hensley* when deciding *Rivera*, the Trial Court in applying *Hensley* also was consistent with This Court's opinion in *Rivera*.

In *Rivera*, Mr. Justice Brennan speaking for himself and three other Justices upheld the Trial Court's determination of an appropriate attorney fee in a situation where the attorney fees were considerably greater than the judgment that the Plaintiffs had been awarded.

Mr. Justice Brennan reviewed the *Hensley* decision and noted that the principles there were still valid. In the course of his ruling, Mr. Justice Brennan spoke specifically to the question of proportioning the attorney fee award based on the monetary had award received by a plaintiff.

> The amount of damages a plaintiff recovers is certainly relevant to the amount of attorney's fees to be awarded under Sec. 1988. See Johnson, 488 F.2d at 718. It is, however, only one of many factors that a court should consider in calculating an award of attorney's fees. We reject the proposition that fee awards under Sec. 1988 should necessarily be proportionate to the amount of damages a civil rights plaintiff actually recovers.
>
> As an initial matter, we reject the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued soley in

> monetary terms. See Carey v. Piphus, 435 U.S. 247, 266 (1978). And, Congress has determined that "the public as a whole has an interest in the vindication of the rights conferred by the statutes enumerated in Sec. 1988, over and above the value of a civil rights remedy to a particular plaintiff . . ." Hensley, 461 U.S., at 444, n4 (Brennan, J., concurring in part and dissenting in part). Regardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in nominal or relatively small damages awards. *Rivera,* 91 L.Ed.2d at 479-480.

It is significant that the Trial Court noted herein the extra judicial effect of the Jury's verdict wherein it would provide guidance to police officers in the future as well as provide the appropriate means for resolving such disputes.

Mr. Justice Powell filed a concurring opinion which also adhered to this Court's decision in *Hensley.* Mr. Justice Powell spoke directly to the question of proportionality and stated as follows:

> Petitioners argue for a rule of proportionality between the fee awarded and the damages recovered in a civil rights case. Neither the decisions of this Court nor the legislative history of Sec. 1988 support such a "rule." The facts and circumstances of litigation are infinitely varible. Under Hensley, of course, "the most critical factor [in the financial determination of fee awards] is the degree of success obtained." 461 U.S., at 436. Where recovery of private damages is the purpose of a civil rights litigation, a district court, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought. In some civil rights cases, however, the court may consider the vindication of constitutional rights in addition to the amount of damages recovered.
> *Rivera,* 91 L.Ed.2d at 486.

The recovery the Respondents' sought was very clearly vindication of their constitutional rights. If the Respondents had only been interested in monetary damages they could have filed a suit in state court based on assault and battery. Instead they contended throughout the course of the litigation that their basic fundamental constitutional rights had been violated by the two named police officers and asked the jury to vindicate those

constitutional rights. The jury did so.

Mr. Justice Rehnquist, in a dissenting opinion in which he was joined by the Chief Justice and two other Justices, also affirmed the Court's holding in *Hensley*. Mr. Justice Rehnquist reaffirmed the lodestar approach announced in *Hensley*. He based his dissent on the fact that he did not believe that the hours spent by Rivera's attorneys were "reasonably" spent. The attorneys in *Rivera* requested payment for 1946.75 hours. The Trial Court had awarded attorney fees for the entire amount of time. Mr. Justice Rehnquist reviewed the specifics of some of the time charged by the attorneys. He expressed the opinion that many of the hours were not reasonably spent and concluded his analysis by stating:

> The plurality, . . . explains the position advanced by Petitioner and the Solicitor General concerning fee awards in a case such as this, and then goes on to "reject the proposition that fee awards under Sec. 1988 should necessarily be proportionate to the amount of damages a civil rights plaintiff actually recovers." . . . I agree with the plurality that the importation of the contingent fee model to govern fee awards under Sec. 1988 is not warranted by the terms and legislative history of the statute. But I do not agree with the plurality if it means to reject the kind of "proportionality" that I have previously described.
>
> ****
>
> In Hensley, we noted that "complex civil rights litigation involving numerous challenges to institutional practices or conditions" might well require "many hours of lawyers' services," and thus justify a large award of attorney's fees . . . This case is a far cry from the situation we referred to in Hensley. [citations omitted] *Rivera*, 91 L.Ed.2d at 492-493.

While Mr. Justice Rehnquist did not specifically reject proportionality, it is clear that he did not adopt proportionality. Instead he based his decision on the reasonableness of the hours for which the Trial Court had permitted payment to Rivera's attorneys.

Very clearly such a situation does not exist in the within matter. The lodestar in this case was the product of 180.5 hours at $125.00 per hour. A review of the hourly charges reflected in

Appendix 1 makes it very clear that there were no situations in which an inordinate amount of time was charged to any particular function. Instead each of the tasks reflects time reasonably expended for the task performed.

The Trial Court after determining the lodestar 180.5 hours at the rate of $125.00 per hour, decided that the fees should be reduced on the basis of the results achieved. Accordingly the Trial Court awarded payment of 100 hours at the rate of $125.00 per hour. This is clearly in keeping with this Court's decisions in *Hensley* and *Rivera*, as the Tenth Circuit Court of Appeals so held.

III. The District Court's ruling is clear and concise and is in keeping with the law as enunciated by this Court

The District Court, in its opinion, expressed an awareness of the principles governing its decision to award attorney fees to a prevailing plaintiff. The District Court recited its awareness of *Ramos v. Lamm*. In *Ramos* the Tenth Circuit had specifically stated that more specific guidelines were necessary for Trial Courts to determine appropriate attorney fee awards. The Tenth Circuit stated "in this endeavor we are aided by the Supreme Court's recent decision in *Hensley v. Eckerhart.*" *Ramos*, 713 F.2d at 557.

The District Court explained its reasons for the fee award, citing the potential for great violence in a community that arises from the kind of police misconduct practiced at Respondents' expense. It noted the propriety of resolving these matters in a court of law rather than having them erupt into episodes of major disobedience and destruction. (*See* Petitioners' Brief, App. A. 3a) The Court also noticed specifically that it was required to measure "the question of how much success was achieved." The Court proceeded to perform that function and adjusted the lodestar accordingly. The Court also took into account the experience of Plaintiffs' counsel in dealing with these matters. (*See* Petitioners' Brief, App. A, 5a)

In summary the District Court's ruling was very clear, very concise and in compliance with the holdings of this Court as well as the Tenth Circuit Court of Appeals.

IV. The Court of Appeals decision is consistent with the decision of this Court.

The Respondents note with favor the citation in Petitioners' Brief (at 13) of a quote from the Tenth Circuit Court of Appeals in *Cooper v. Singer,* 719 F.2d 1496 (10th Cir. 1983) (en banc).

Petitioners have, in their own minds, determined that the only purpose for the lawsuit was for monetary award. They continue to overlook the seriousness of a violation of a person's constitutional and civil rights. The Court of Appeals, as did the Trial Court, recognized that this was a matter brought to the courts for vindication of such rights. In reviewing the action of the Trial Court, the Court of Appeals appropriately determined that the Trial Court had followed existing law in reaching its decision in relation to the award of attorney fees in the within matter.

CONCLUSION

For the reasons indicated herein the Respondents urge that this Court deny the Petitioners' Petition for Writ of Certiorari. The record before this Court clearly demonstrates that the courts below appropriately applied the law as enunciated by This Court.

There are no issues raised in this Petition that have not already been decided by This Court. There is no indication that the various circuits are deciding the matter raised in this Petition in any ways that are inconsistent with the decision of the Tenth Circuit Court of Appeals. Uniformly, the decisions Respondents have reviewed from the various Courts of Appeals indicate that all have recognized that this Court has not imposed a rule of proportionality in civil rights attorney fee cases.

Respectfully submitted,
TRIMBLE, TATE & NULAN

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(303) 449-3891

CERTIFICATE OF SERVICE

I, Joseph C. French, one of the attorneys for Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of March, 1988, I served copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari on Petitioners, City of Aurora, et al, by depositing copies in the United States Post Office located at 1823 Stout St., Denver, Colorado with first class postage prepaid, and properly addressed to their counsel of record:

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Telephone: (303) 449-3891
Attorney for Respondents

APPENDIX I

IN THE
UNITED STATES DISTRICT COURT
For the District of Colorado

Civil Action No. 81JM116

JEWELL NEPHEW,
et al.,

Plaintiffs,

v.

CITY OF AURORA,
et al.,

Defendants.

MOTION FOR ATTORNEY FEES AND COSTS

COME NOW the Plaintiffs, Fulton and Perkins, by their attorneys, TRIMBLE, TATE & NULAN, and move this Honorable Court to award attorney fees and costs as herein indicated.

1. Attached hereto is an Affidavit signed by undersigned attorney indicating the hours expended in pursuit of this matter on behalf of Plaintiffs Fulton and Perkins. The Affidavit totals 180.5 hours. All hours attributable soley to either Plaintiffs Nephew or Neloms have been removed and are not included in this total. The hourly rate for civil rights matters presently charged by the undersigned attorney is $125.00 per hour. At the time the undersigned attorney was retained, in May, 1979, his hourly rates for civil rights matters was $90.00 per hour. Beginning January 1, 1981, the undersigned attorney raised his rates for civil rights matters to $110.00 On January 1, 1983, undersigned counsel raised his rates to $125.00 per hour. Counsel believes that he is entitled to payment at his current hourly rate resulting in an attorney fee request in the amount of $22,562.50.

2. Undersigned counsel also advises the Court that the total hours indicated above include 34.9 hours of time expended exclusively for an action in state court arising from the same incident. The Plaintiffs herein were Defendants in the state court; and by means of a counterclaim, they alleged a violation of 42 U.S.C. 1983. The cases were waged simultaneously. Almost without exception, the actions taken in one case were useful in terms of the other case. The parties hereto are agreed that the decision of the jury in this matter renders moot the state proceedings and have agreed to dismiss those proceedings without any further actions. The Plaintiffs believe that they are entitled to attorney fees for the hours expended in that case, as well as the within case. And those hours are included in the total.

3. Plaintiffs incurred the following costs in pursuit of this action:

filing fee	$60.00
service charges (process)	46.64
expert witness:	
Dr. Kowalski	250.00
	356.64

WHEREFORE, Plaintiffs Fulton and Perkins pray that the Court enter judgment to include the amounts indicated above as costs taxable against the Defendants.

TRIMBLE, TATE & NULAN

By _____

PENFIELD W. TATE, II, 4681
Attorneys for Plaintiffs
Perkins and Fulton
1700 Broadway, Suite 701
Denver, Colorado 80290-0799
839-1572

CERTIFICATE OF MAILING

I certify that on May 28th, 1983, I sent a true copy of the foregoing pleading, sufficient postage prepaid, through the U.S. mail service, to: ROBERT A. DULL, Attorney, 700 E. Speer Blvd., Denver, Colorado 80203

and to : CHARLES RICHARDSON, JR., Attorney, 1470 South Havana Street, Suite 820, Aurora, Colorado 80012.

IN THE

UNITED STATES DISTRICT COURT

For the District of Colorado

Civil Action No. 81JM116

JEWELL NEPHEW,
et al.,

Plaintiffs,

v.

CITY OF AURORA,
et al.,

Defendants.

AFFIDAVIT OF PLAINTIFFS' ATTORNEY RE ATTORNEY FEES

STATE OF COLORADO)
) ss.
City and County of Denver)

I, PENFIELD W. TATE, II, being of lawful age and having first been duly sworn, depose and say:

1. I am counsel for Plaintiffs in the above action.

2. I certify that the Time Record attached hereto is a true representation of the hours incurred by me in order to represent the Plaintiffs in this action, according to my best knowledge, information and belief.

Date: _____

TRIMBLE, TATE & NULAN

By _____
PENFIELD W. TATE, II, 4681
Attorneys for Plaintiffs
1700 Broadway, Suite 701
Denver, Colorado 80290-0799
839-1572

Subscribed and sworn to before me this _____ day of May, 1983.

My commission expires: _____

Fulton, et al, v. Peterson and Thomas

Civil _____

TIME RECORD

1979:

Jan. 25	4.0 hrs.	consultation w/ client & warrants
May 29	2.0 hrs.	consultation with client
June 27	2.1 hrs.	letter to City of Aurora
July 1-31	1.7 hrs.	consultation with clients
Sept. 1-15	15.0 hrs.	research Sec. 1983, et al.
Sept. 25	5.0	motions for extensions
Oct. 7	3.3 hrs.	research & pre. motions—remove

1980:

March 15	2.5 hrs.	research & filing on Change of Venue
	1.3 hrs.	hrg. Change of Venue (denied)
Aug. 4	3.2 hrs.	prep of Response & Conterclaim
Aug. 15	1.6 hrs.	prep of Motion to Add Parties

1981:

April 4	1.2 hrs.	appear, for Motion to Add Parties (Plain.) (denied)
April 23	2.3 hrs.	prep. for & hrg. of Motion to Add Plaintiffs
May 19	2.6 hrs.	prep. & filing Complaint & ff
Aug. 6	10.3 hrs.	research & prep. of resp. to Motion to Dis.

1982:

March 17	2.1 hrs.	review of interrogatories
May 7	2.0 hrs.	Pretrial Conf.
May 12	4.3 hrs.	prep. pretrial Order and con.
May	.7 hrs.	interrogatories to Defts.
June 3	1.8 hrs.	resp. to Motion for Judgment on Plaintiffs
June 7	6.0 hrs.	Fulton answers interrogatories
June 11	3.0 hrs.	deposition Fulton
July	1.3 hrs.	Sanctions on Perkins
Aug. 13	4.5 hrs.	Perkins answers to Interrogs.
Aug. 17	3.0 hrs.	Perkins deposition
Aug. 18	4.0 hrs.	Pre. witn trial, Arapahoe
Aug. 19	4.0 hrs.	trail & mistrail, Arap.
Oct. 3	1.2 hrs.	review of Defts. answers to interrogatories

1983:

April 1	3.0 hrs.	review of file, prep. of 30 day status report
April 11	2.5 hrs.	Motion in Lemine and Production of
April 12	2.0 hrs.	Motion in Lemine re witnesses
April 18	6.0 hrs.	response to Motion to Dismiss
April 21	1.0 hrs.	hearing on motions
April 23	3.0 hrs.	trial prep. Fulton
April 24	2.5 hrs.	trial prep. Perkins
April 24	2.0 hrs.	interview Dr. Kowalski
April 25-29	20.0 hrs.	Research, trial preparation
May 2-5	22.0 hrs.	jury instructions, voir dire
	10.5 hrs.	misc. letters and correspondence